# Race Kritik

## Top Level

### 1NC Shell

#### The affirmative's conception of free speech prioritizes neutrality while simultaneously devaluing social justice – reject abstract notions of equality in favor of analysis of the power inequities that shape speech

Boler 2k [Megan Boler (Professor in the Ontario Institute for Studies in Education at the University of Toronto and editor of Digital Media and Democracy), "All Speech is Not Free: The Ethics of "Affirmative Action Pedagogy," Philosophy of Education, 2000] AZ

All speech is not free. Power inequities institutionalized through economies, gender roles, social class, and corporate-owned media ensure that all voices do not carry the same weight. As part of Western democracies, different voices pay different prices for the words one chooses to utter. Some speech results in the speaker being assaulted, or even killed. Other speech is not free in the sense that it is foreclosed: our social and political culture predetermines certain voices and articulations as unrecognizable, illegitimate, unspeakable.1 Similarly, neither are all expressions of hostility equal. Some hostile voices are penalized while others are tolerated.2 Hostility that targets a marginalized person on the basis of her or his assumed inferiority carries more weight than hostility expressed by a marginalized person towards a member of the dominant class. Efforts to legislate against “hate speech” within public spaces cannot, in principle, recognize the differential weight and significance of hate speech directed at different individuals or groups. If all speech is not free, then in what sense can one claim that freedom of speech is a working constitutional right? If free speech is not effective in practice, then a historicized ethics is required. Thus the discomforting paradox of U.S. democracy: while we may desire a principle of equality that applies in exactly the same way to every citizen, in a society where equality is not guaranteed we require historically sensitive principles that appear to contradict the ideal of “equality.” An historicized ethics operates toward the ideal of principles such as constitutional rights, but also recognizes the need to develop ethical principles that take into account that all persons do not have equal protection under the law nor equal access to resources. Within a climate of extreme backlash to affirmative action and to women’s rights, I propose what I call an “affirmative action pedagogy”: a pedagogy that ensures critical analysis within higher education classrooms of any expression of racism, homophobia, anti-Semitism, or sexism, for example. An affirmative action pedagogy seeks to ensure that we bear witness to marginalized voices in our classrooms, even at the minor cost of limiting dominant voices.

#### Our alternative is a historicized ethics that reveals the racial contradictions within the law, empowering marginalized voices to overcome current problematic discourse

Boler 2k [Megan Boler (Professor in the Ontario Institute for Studies in Education at the University of Toronto and editor of Digital Media and Democracy), "All Speech is Not Free: The Ethics of "Affirmative Action Pedagogy," Philosophy of Education, 2000] AZ

JUSTIFICATIONS FOR HISTORICIZED ETHICS On what basis might one justify an affirmative action pedagogy? The first justification is forwarded by legal scholars in the area of critical race theory. The authors of Words that Wound address the tension between the First and Fourteenth amendment. The tension arises because, in fact all people are not equally protected under the law due to the institutionalized inequities within our society. This complicates the effectiveness of the First Amendment. Scholarship in critical race theory and educational analyses document that in recent years we find incidents of hate speech primarily to be directed at racial, religious, or sexual minorities. Not surprisingly, one finds in turn that invocations of the right to free speech are most often invocations to protect the right of the members of the dominant culture to express their hatred toward members of minority culture. These authors make important legal and historical cases to support their observation that, in practice, while the rhetoric of the First Amendment is a buzz word that makes all of us want to rally for its principle, in practice “the First Amendment arms conscious and unconscious racists — Nazis and liberals alike — with a constitutional right to be racist. Racism is just another idea deserving of constitutional protection like all ideas.”4 Similarly, Judith Roof, a scholar from another discipline addresses classroom dynamics and argues that we must “read the appeal to the First Amendment as itself a kind of panic response in the same order as hate speech itself.”5 A second justification for privileging marginalized voices is based on the measurement of the psychological effect of hate speech on targeted groups and individuals. As one legal scholar explains, hate speech affects its victim in the visceral experience of a “disorienting powerlessness,” an effect achieved because hate speech is comparable to an act of violence.6 In reaction to hate speech, the target commonly experiences a “state of semishock,” nausea, dizziness, and an inability to articulate a response. This scholar gives an example of a student who is white and gay. The student reports that in an instance where he was called “faggot” he experienced all of the above symptoms. Yet when he was called “honky,” he did not experience the disorienting powerlessness. As the scholar remarks, “the context of the power relationships in which the speech takes place, and the connection to violence must be considered as we decide how best to foster the freest and fullest dialogue within our communities.”7

#### The affirmative believes that, through free exchange of ideas, we can somehow convince the racist – empirics demonstrate that speech doesn't result in social change and only the alternative can solve oppression

Tillett-Saks 13 [Andrew Tillett-Saks (organizer with UNITE HERE Local 217), "Neoliberal Myths," Counterpunch, 11/7/2013] AZ

The twofold argument against the protestors stems from two central myths of neoliberalism. The argument for free discourse as the enlightened path to justice ignores that direct action protest is primarily responsible for most of the achievements we would consider ‘progress’ historically (think civil rights, workers’ rights, suffrage, etc.), not the free exchange of ideas. The claim that silencing speech in the name of freedom is self-defeating indulges in the myth of the pre-existence of a free society in which freedom of speech must be preciously safeguarded, while ignoring the woeful shortcomings of freedom of speech in our society which must be addressed before there is anything worth protecting.

Critics of the protest repeatedly denounced direct action in favor of ideological debate as the path to social justice. “It would have been more effective to take part in a discussion rather than flat out refuse to have him speak,” declared one horrified student to the Brown Daily Herald. Similarly, Brown University President Christina Paxson labeled the protest a detrimental “affront to democratic civil society,” and instead advocated “intellectual rigor, careful analysis, and…respectful dialogue and discussion.” Yet the implication that masterful debate is the engine of social progress could not be more historically unfounded. Only in the fairy tale histories of those interested in discouraging social resistance does ‘respectful dialogue’ play a decisive role in struggles against injustice. The eight-hour workday is not a product of an incisive question-and-answer session with American robber barons. Rather, hundreds of thousands of workers conducted general strikes during the nineteenth century, marched in the face of military gunfire at Haymarket Square in 1886, and occupied scores of factories in the 1930’s before the eight-hour work day became American law. Jim Crow was not defeated with the moral suasion of Martin Luther King, Jr.’s speeches. Rather, hundreds of thousands marched on Washington, suffered through imprisonment by racist Southern law enforcement, and repeatedly staged disruptive protests to win basic civil rights. On a more international scale, Colonialism, that somehow-oft-forgotten tyranny that plagued most of the globe for centuries, did not cease thanks to open academic dialogue. Bloody resistance, from Algeria to Vietnam to Panama to Cuba to Egypt to the Philippines to Cameroon and to many other countries, was the necessary tool that unlocked colonial shackles. Different specific tactics have worked in different contexts, but one aspect remains constant: The free flow of ideas and dialogue, by itself, has rarely been enough to generate social progress. It is not that ideas entirely lack social power, but they have never been sufficient in winning concessions from those in power to the oppressed. Herein lies neoliberal myth number one—that a liberal free-market society will inexorably and inherently march towards greater freedom. To the contrary, direct action has always proved necessary.

#### Racism must be rejected in every instance without surcease. It justifies atrocities, and is truly the capital sin.

Memmi 2k – Albert, Professor Emeritus of Sociology @ Unv. Of Paris, Albert (*RACISM*, translated by Steve Martinot, pp.163-165) jwang

The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved, yet for this very reason, it is a struggle to be undertaken without surcease and without concessions. One cannot be indulgent toward racism. One cannot even let the monster in the house, especially not in a mask. To give it merely a foothold means to augment the bestial part in us and in other people which is to diminish what is human. To accept the racist universe to the slightest degree is to endorse fear, injustice, and violence. It is to accept the persistence of the dark history in which we still largely live. It is to agree that the outsider will always be a possible victim (and which [person] man is not [themself] himself an outsider relative to someone else?). Racism illustrates in sum, the inevitable negativity of the condition of the dominated; that is it illuminates in a certain sense the entire human condition. The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animality to humanity. In that sense, we cannot fail to rise to the racist challenge. However, it remains true that one’s moral conduct only emerges from a choice: one has to want it. It is a choice among other choices, and always debatable in its foundations and its consequences. Let us say, broadly speaking, that the choice to conduct oneself morally is the condition for the establishment of a human order for which racism is the very negation. This is almost a redundancy. One cannot found a moral order, let alone a legislative order, on racism because racism signifies the exclusion of the other and his or her subjection to violence and domination. From an ethical point of view, if one can deploy a little religious language, racism is “the truly capital sin.”fn22 It is not an accident that almost all of humanity’s spiritual traditions counsel respect for the weak, for orphans, widows, or strangers. It is not just a question of theoretical counsel respect for the weak, for orphans, widows or strangers. It is not just a question of theoretical morality and disinterested commandments. Such unanimity in the safeguarding of the other suggests the real utility of such sentiments. All things considered, we have an interest in banishing injustice, because injustice engenders violence and death. Of course, this is debatable. There are those who think that if one is strong enough, the assault on and oppression of others is permissible. But no one is ever sure of remaining the strongest. One day, perhaps, the roles will be reversed. All unjust society contains within itself the seeds of its own death. It is probably smarter to treat others with respect so that they treat you with respect. “Recall,” says the bible, “that you were once a stranger in Egypt,” which means both that you ought to respect the stranger because you were a stranger yourself and that you risk becoming once again someday. It is an ethical and a practical appeal – indeed, it is a contract, however implicit it might be. In short, the refusal of racism is the condition for all theoretical and practical morality. Because, in the end, the ethical choice commands the political choice. A just society must be a society accepted by all. If this contractual principle is not accepted, then only conflict, violence, and destruction will be our lot. If it is accepted, we can hope someday to live in peace. True, it is a wager, but the stakes are irresistible.

### FW – Reid-Brinkley

#### Our discussion of the discursive constructions that make racial domination possible is key – these discourses perpetuate the exclusionary nature of the debate community

Reid-Brinkley 08 (Shanara Rose Reid-Brinkley, Assistant Professor of African American Studies and Communications as well as the Director of Debate at the University of Pittsburgh, “THE HARSH REALITIES OF “ACTING BLACK”: HOW AFRICAN-AMERICAN POLICY DEBATERS NEGOTIATE REPRESENTATION THROUGH RACIAL PERFORMANCE AND STYLE,” 2008]

The attempts at educational reform are not limited to institutional actors such as the local, state, and federal governments. Non-profit organizations dedicated to alleviating the black/white achievement gap have also proliferated. One such organization, the Urban Debate League, claims that “Urban Debate Leagues have proven to increase literacy scores by 25%, to improve grade-point averages by 8 to 10%, to achieve high school graduation rates of nearly 100%, and to produce college matriculation rates of 71 to 91%.” The UDL program is housed in over fourteen American cities and targets inner city youths of color to increase their access to debate training. Such training of students defined as “at risk” is designed to offset the negative statistics associated with black educational achievement. The program has been fairly successful and has received wide scale media attention. The success of the program has also generated renewed interest amongst college debate programs in increasing direct efforts at recruitment of racial and ethnic minorities. The UDL program creates a substantial pool of racial minorities with debate training coming out of high school, that college debate directors may tap to diversify their own teams. The debate community serves as a microcosm of the broader educational space within which racial ideologies are operating. It is a space in which academic achievement is performed according to the intelligibility of one’s race, gender, class, and sexuality. As policy debate is intellectually rigorous and has historically been closed to those marked by social difference, it offers a unique opportunity to engage the impact of desegregation and diversification of American education. How are black students integrated into a competitive educational community from which they have traditionally been excluded? How are they represented in public and media discourse about their participation, and how do they rhetorically respond to such representations? If racial ideology is perpetuated within discourse through the stereotype, then mapping the intelligibility of the stereotype within public discourse and the attempts to resist such intelligibility is a critical tool in the battle to end racial domination. Education theorist Ludwig Pongratz argues that the testing focus in the standards and accountability movement is “probably the most effective means of realizing disciplinary procedures.” 11 He argues further that the contemporary “reformist drive” sweeping western nations is a tool designed to replicate normative practices, values, beliefs and behaviors consistent with the broader society. In other words, building on the work of Michel Foucault, Pongratz argues that the educational system, including reform efforts, function as a disciplinary “apparatus” that shapes and molds social bodies into normalized social systems. 12 The disciplinary character of modern education systems do not operate through institutional control, but instead through the positioning of social bodies to engage in self-control, an internalization of the discourse of institutional power. Pongratz notes that “in this way, it becomes possible to integrate school pupils into the school’s institutional framework more effectively than ever before.” 13 Acclaimed French Sociologist Pierre Bourdieu’ theory of habitus is useful here. For Bourdieu, habitas represents the incorporation of the “social into the corporeal.” 14 Gender theorist Terry Lovell argues “Through habitus, social norms are incorporated in the body of the individual subject.” 15 An institution, like those attached to public education in the U.S. “can only be efficacious if it is objectified in bodies in the form of durable dispositions that recognize and comply with the specific demands of a given institutional area of activity.” 16 In other words, the disciplinary character of the school system only functions in so much as disciplinary parameters can be internalized by the members of a social body. What is missing from the study of education reform and the black/white “achievement gap” is an analysis of the discursive construction of racial “images and stereotypes with which” the public is “confronted.” 17 Public discourse about education reform, particularly that which revolves around the black/ white achievement gap, requires the use of race, class, and gender imagery that is intelligible to the general public. In essence, from experts to politicians to the news media, public representations of black underachievement and reform efforts depend on the versatility of social and cultural stereotypes consistent with the argumentative structures and social ideologies that make rhetorical efforts at reform intelligible. Education reform engages in a discourse of “paradigm shift.” 18 In essence there is a discursive consistency amongst education reform proponents for characterizing reform efforts as a change in perspective from previous values and beliefs about how best to educate America’s youth. Philosophy of education scholar Jeff Stickney argues that scholars interested in the production of education reform discourse should be concerned with “how a change of perception is to be brought about or secured.” 19 In other words, Stickney argues that the discourse supporting educational reform functions to discipline educators into a compliance that belies any attempt to critique and engage the viability of the reform effort to the specific contexts educators find themselves working within. 20 While Stickney is interested in engaging such discourse for the purpose of furthering theoretical scholarship on curriculum development, his study raises the question of how the public discourse surrounding education reform may function to discipline its differently situated stakeholders.

### FW – Colleges Key

#### Colleges matter – racial discourse surrounding universities spills over to the rest of American society

Gordon & Johnson 95 [Jill Gordon (Charles A. Dana Professor of Philosophy, Colby College) and Markus Johnson, "Race, Speech, and a Hostile Educational Environment: What Color Is Free Speech?" Journal of Social Philosophy, 2003] AZ

From racially motivated police brutality to kindly condescension, racism and racialized behavior pervade American life and manifest themselves in a range of phenomena.1 Psychologists and legal scholars have demonstrated the various ways in which sometimes subtle but invidious racism permeates American institutions and personal interactions between whites and blacks.2 We focus on one particular institution and set of interactions, namely, predominantly white college campuses and the antiblack racist speech and behavior that take place there, in an effort to analyze the type of harm done in this context and to suggest a solution analogous to the legal precedent set in cases involving “hostile work environments.” We believe that a hostile educational environment is one manifestation of what Charles Mills (1997) calls the legacy of the Racial Contract. Whites continue to express and act on racist beliefs and ideals, while refusing to recognize their ideas and behaviors as such, and when it comes to remedying the consequences of antiblack racism through legal means, pervasive white “moral cognitive dysfunction”3 keeps the legal system from recognizing and legitimizing the problem and from seeing potential avenues of redress already available. Unless or until there is redress of the harm to black students on predominantly white campuses, they are being denied a fundamental educational opportunity in institutions thought to be crucial to social and economic advancement in our democracy. This not only harms African Americans but threatens democracy itself

### Williams Alt

#### The alternative is to view speech as performative, rather than representational.

* relational model of truth
* admits role of reason
* all language is normative and expresses values from a certain context
* balance between relativism and objectivity—contexts aren't too broad or too narrow

Williams 8 [Susan H. Williams (Walter W. Foskett Professor of Law, Indiana University Maurer School of Law — Bloomington; Director of the Center for Constitutional Democracy), “Feminist Theory and Freedom of Speech,” Indiana Law Journal. 1/18/08] AZ

The relational model of truth is non-Cartesian because it rejects all of the central tenets of the Cartesian model: objectivity, rationalism, universalism, and the representational view of truth. This new model sees truth as fundamentally contextual and normative. That is, knowers can engage in the activity of knowledge-making only from a particular position or perspective, one that is radically shaped by their cultural context, including their normative concerns. Such contexts should not be seen as impediments to knowledge, but as preconditions of it. To ask what we could know if we could escape all such cultural perspectives is like asking what we could see if we could escape having any particular sorts of eyes. Interpretation, with its contextual and evaluative character, is as essential to the process of making truth as the biomechanics of eyes are to the process of seeing. One result of this focus on interpretation is that truth is seen as made by human actors rather than discovered. There is no passive receptivity to an external reality; rather, there is an active process of interpretation. Another result of the focus on interpretation is that the traditional dichotomies—particularly the fact/value distinction—are made untenable. There are no facts that are not permeated by values because all result from a process of interpretation that is inherently normative. The relational model also rejects universalism: truth may often be plural rather than singular. The rationalist bias also falls away. First, reason cannot be understood in the abstract and instrumental way that it traditionally has been, as focused on logic and means/end rationality. Reason, like truth, is highly contextual. Second, reason cannot be contrasted with emotion or politics simply because the latter are seen as normative in nature. The opposite of a reasoned judgment is not an emotional one, but an unreasonable one: emotions are often quite reasonable.25 None of this means, however, that reason should lose its place among—maybe even in the forefront of—those human capacities we use to make knowledge. Reason, like truth, is a category worth rehabilitating. Reason is the process through which we make sense of our experience. “Making sense” is, of course, a highly contextual matter: the sort of argument that can make sense of our experience in a physics laboratory (mass, velocity, vectors) is not the same as the sort of argument that can make sense of our experience at a baseball game (strikes, foul balls, and runs). The concept of reason captures this concern that some things—such as forms of argument and conceptual categories—in some contexts, help us to make sense of our experience better than others.26 Finally, the relational model of truth sees language in a way quite different from the traditional Cartesian propositional, representational view. Because cultural understandings so deeply shape our truths, and because language is one of the primary vehicles through which such understandings are created, maintained, and transmitted, language is seen as performative rather than as representational. To make a truth claim is to do something in the world, not merely to represent something that already exists. With this sketch of the model in place, we can now turn to consider how this model serves the purposes or functions of truth outlined in the previous Part. The first function of truth was to serve as the basis for claims of intersubjective knowledge, claims concerning a shared reality that makes cooperative social action possible. The second function of truth was to serve as the basis for a critique of existing social institutions and conventions, a critique that can be broad and deep rather than merely a matter of “tinkering.” These two functions mark the acceptable range on a continuum: at one end is a cultural framework that is so totally open that it allows for too little shared reality (relativism) and at the other end is a cultural framework so totally closed that it allows for too little critique (conventionalism). If all knowledge is contextual, then one way to see this problem is as a dilemma about the size of the context. If we are looking for a context rich and powerful enough to generate a shared reality on a controversial issue, then we can find ourselves drawing the context ever smaller, in order to find enough common ground for a consensus. Such a shrinking context, however, can leave us with a radical relativism in which truth can be determined only from within a given viewpoint, and viewpoints are—at least potentially—no bigger than a single person. Shared reality would then become difficult or impossible. On the other hand, if we are looking for a context big enough to include deep and broad challenges to our assumptions, then we may find ourselves expanding the boundaries of the context beyond the usual cultural limits. Such an expanding context, however, can leave us with too little in common to draw on for any kind of claim at all. Deep critique would then become meaningless: it would be like criticizing people in a language they do not understand. Thus, the two functions of speech push in opposite directions but each, if taken to an extreme, undermines its own goals. The need for a shared reality pushes us toward smaller contexts, but if they are too small they cannot sustain such a reality. The need for deep critique pushes us toward larger contexts, but if the context is too large it cannot sustain such a critique. When seen this way, the problem is finding the right context: one that is small enough to generate a strong sense of shared reality, but big enough to provide materials for deep criticism of its own assumptions.

## Links

### Link—"Marketplace"

#### "Marketplace of ideas" metaphor is a link – 3 reasons

* Hate speech not relevant to "marketplace"
* "Free market" assumes equal playing field, which doesn't account for racism/sexism
* Hate speech isn't rational

Eckert 10 [Lynn Mills Eckert (Associate Professor of Political Science at Marist University), "A Critique of the Content and Viewpoint Neutrality Principle in Modern Free Speech Doctrine," Law, Culture and the Humanities, 2010] AZ

Justices Holmes’ and Douglas’ elaboration of free speech and its role in democracy raise several issues that remain relevant to modern-day legal and philosophical debates about hate speech. Both Justice Holmes and Justice Douglas conflate two different kinds of speech. The strongest version or interpretation of the Holmes/Douglas libertarian position eliminates justifications for almost every proscribable category of speech in modernday constitutional law and leaves courts without guidelines for determining when to apply traditionally proscribable categories of speech such as fighting words. The history that Justices Holmes and Douglas present about the First Amendment is inaccurate too. As is well documented, the founders, in passing the Alien and Sedition Act, proscribed quite a bit of political speech, which explains why modern-day free speech jurisprudence cannot rely upon originalism to justify outcomes like that in R.A.V. v. St. Paul. 34 Moreover, while the core of their free speech theory articulates the centrality of free speech to democracy, their concept of how we arrive at the truth and their use of the market metaphor is faulty. The Court ought not to confuse the speech of minorities and women seeking political change with hate speech. The speech of Martin Luther King Jr. constitutes dissident speech which is “directed at the powerful institutions that govern our lives.”35 Hate speech targets the “least powerful segments” in our political community.36 Mari Matsuda argues that the conflation of dissident speech with hate speech suggests that we have no criteria for distinguishing injurious speech from other kinds of speech.37 Under that logic, we ineluctably find ourselves protecting all speech even libel and fighting words, which are traditionally proscribable areas of speech. Moreover, free markets sometimes malfunction, creating what economists euphemistically call dislocations. The free marketplace of ideas is subject to similar distortions. Racism or sexism frequently affect the ability of the speaker’s ideas to compete; prejudice consciously or unconsciously devalues ideas because they come from a member of the discredited group (women, African-Americans, gays and lesbians, etc.). Racism or sexism can also affect the speaker’s ability to speak. This is the more pernicious effect of racism or sexism because the speaker may internalize racist, sexist, or homophobic beliefs. In describing the effects of segregation in the Brown v. Board of Education decision, Lawrence writes: Psychic injury is no less an injury than being struck in the face, and it often is far more severe. Brown speaks directly to the psychic injury inflicted by racist speech in noting that the symbolic message of segregation affected the “hearts and minds” of Negro children “in a way unlikely ever to be undone.”38 As a result, some viewpoints compete on an unequal footing or never make it to the marketplace. The free marketplace of ideas presumes that rationality or reason is the invisible hand under which the market operates yet racism, sexism, or homophobia constitute irrational judgments about individuals based on their immutable characteristics. Black’s Law Dictionary defines discrimination as the disparate treatment of similarly situated individuals based on arbitrary or unreasonable distinctions such as race or sex. Sexism, racism, and homophobia short-circuit rationality or reason, the one cognitive process necessary for developing criteria for and reaching a consensus about the truth in the so-called marketplace. Rationality or reason is also a crucial cognitive process for the operation of selfgovernment. In democracies, we rely on good, publicly justifiable reasons to exercise legitimate authority. The marketplace metaphor is too often reflexively invoked as a defense of absolutism to the extent that it has become First Amendment dogma. Such absolutist dogma sidelines equally legitimate and compelling interpretations of free speech. Sunstein writes: The most striking development in free speech law is that marketplace thinking has become so dominant, and the competing views so dormant, that it’s difficult to even identify those competing views.39 This is problematic for Sunstein and other scholars, including myself, because the object of free speech is not the object of the marketplace. The end of the political sphere, which is justice, is different from the end of the economic sphere, which is maximizing profit and satisfying consumers. Free competition in the marketplace usually produces efficient economies and satisfies consumer wants, but laissez-faire competition among all kinds of speech, even the most violent, may not produce results conducive to self-government. A constitutional democracy relies on speech and reason to resolve political dilemmas justly. Therefore, the dialogical nature of democracy necessitates that some forms of speech, which provoke violence or corrode reasoned discussion, breaking down deliberation, deserve scrutiny. Speech serves a political end in that self-government depends upon our ability to reason and exchange ideas, deliberate, and debate. A concept of free speech that permits assaultive racist language into the marketplace of ideas, even eloquently defends it, misses the foundational purpose of free speech in a democracy. It allows into the marketplace a form of expression that corrodes the invisible hand upon which the market depends, namely, reason.

### Link—Content Neutrality

#### The claim that free speech is a neutral value ignores the nature of speech itself – language is designed to benefit white supremacy – targets of hate speech can't respond since there is no equivalent for racial insults against white people

Delgado 3 [Richard Delgado (professor at the University of Colorado Law School in Boulder) and Jean Stefancic, "Colleges Should Adopt Speech Codes," 2003] AZ

The core difficulty that hate speech poses for the conservative mind is, simply, that there is no correlate—no analog—for hate speech directed toward whites, no countering message which cancels out the harm of “Nigger, you don’t belong on this campus—go back to Africa.” Vituperation aimed at blacks wounds; there is nothing comparably damaging that whites have to undergo. The word “honky” is more a badge of respect than a put-down. “Cracker,” although disrespectful, still implies power, as does “redneck.” The fact is that terms like “nigger,” “spic,” “faggot,” and “kike” evoke and reinforce entire cultural histories of oppression and subordination. They remind the target that his or her group has always been and remains unequal in status to the majority group. Even the most highly educated, professional-class African American or Latino knows that he or she is vulnerable to the slur, the muttered expression, the fishy glance on boarding the bus, knows that his degree, his accomplishments, his well-tailored suit are no armor against mistreatment at the hands of the least-educated white. But not only is there no correlate, no hate speech aimed at whites, there is no means by which persons of color and others can respond effectively to this form of speech within the current system. Our culture has developed a host of narratives, mottoes, and presuppositions that render it difficult for the minority victim to talk back in individual cases, and to mobilize effectively against hate speech in general. These include: feelings are relatively unimportant, words hurt only if you let them; rise above it; don’t be so sensitive; don’t be so humorless; talk back—show some back-bone. Stated or unstated narratives like these form part of the linguistic and narrative field on which minority victims must play in responding to taunts and epithets, and of course limit the efficacy of any such response. And when campus minorities do mobilize for measures that would curb hate speech in general, they encounter additional obstacles. Although our system of free speech has carved out or tolerated dozens of “exceptions” and special doctrines, opponents conveniently forget this, treating the demand for even narrowly tailored anti-hate-speech rules as a shocking request calculated to endanger the entire edifice of First Amendment protection. Hate speech, then, is individually wounding in a way that finds no analog with respect to whites; there is no effective way for a victim to speak back or counter it, even when it is physically safe to do so; and the most frequently targeted groups evoke little sympathy from society or the legal system when they ask for protection. In other settings, the combination of the three features just enumerated would cause us to conclude that the playing field is not level, but sharply slanted. Imagine, for example, an athletic competition in which one side is denied a powerful weapon (say, the forward pass); in which the other side is permitted to deploy this weapon freely, because the rules prevent the first from doing anything to counter it when it is used (such as knocking down the ball); and changes in the rules are not permitted because this is said to violate the charter that established the game in the first place. Surely, we would say that such a competition is unfair. Yet, something like that characterizes the predicament of minority victims of hate speech. Conservatives cannot allow themselves to see this, however, since it goes against some of their most basic assumptions, including free competition and merit. We believe this accounts for the contortions and maneuverings among neoconservatives, including some of color who ought to know better. But the problem of hate speech will not go away by merely insisting on ideologically based truths that “must be so,” nor by responses that ought to work, much less by blaming the victim or telling him that the problem is all in his head. Hate speech renders campuses uncomfortable and threatening to substantial numbers of students at vulnerable points in their lives. It helps construct and maintain a social reality in which some are constantly one-down in encounters that everyone agrees matter. And it tolerates and creates culture at odds with our deepest national values and commitments. Coming to grips with hate speech does pose serious problems for a society committed both to equality and to individual freedom and autonomy. But resorting to facile arguments like those discussed in this chapter does little to advance the discussion. Neoconservatives should allow themselves to see what everyone else sees—that hateful slurs and invectives are a virulent form of inequality reinforcement—and join the serious search now beginning for cures to this national disease.

### Link—"Equal" Speech

#### The assumption that the First Amendment is value-neutral ignores how racism excludes black students from free expression – speech codes merely rectify power inequality

Boler 2k [Megan Boler (Professor in the Ontario Institute for Studies in Education at the University of Toronto and editor of Digital Media and Democracy), "All Speech is Not Free: The Ethics of "Affirmative Action Pedagogy," Philosophy of Education, 2000] AZ

What does it mean to recognize, in the educational practices of college and university classrooms, that all voices are not equal? The solution is neither to invoke an absolutist sense of free speech, nor to prohibit simply and absolutely all hostile expressions. The uniqueness of classrooms is that, ideally, they provide a public space in which marginalized and silenced voices can respond to ignorant expressions rooted in privilege, white supremacy, or other dominant ideologies. Unlike many public spaces in which one may encounter hate speech — say, on a street or in a shopping mall — the classroom is one of the few public spaces in which one can respond and be heard. In these classrooms, educators must deal with messy issues that others cannot or do not want to address. Does this give educators any special Constitutional privilege or dispensation? I leave that question open. However, to advocate that we use classrooms to critically interrogate racist and homophobic remarks is not based on an invocation of free speech. Rather, an affirmative action pedagogy recognizes that we are not equally protected in practice by the first amendment, and that education needs fairly to represent marginalized voices by challenging dominant voices in the classroom.

### Link—"Free Exchange"

#### Their notion of free speech is neoliberal

Tillett-Saks 13 [Andrew Tillett-Saks (organizer with UNITE HERE Local 217), "Neoliberal Myths," Counterpunch, 11/7/2013] AZ

The premise of this argument is neoliberal myth number two—that we live in a society with ‘freedom of speech’ so great it must be protected at all costs. This premise stems from an extremely limited conception of ‘freedom of speech’. Free speech should not be considered the mere ability to speak freely and inconsequentially in a vacuum, but rather the ability to have one’s voice heard equally. Due to the nature of private media and campaign finance in American society, this ability is woefully lopsided as political and economic barriers abound. Those with money easily have their voices heard through media and politics, those without have no such freedom. There is a certain irony (and garish privilege) of upper-class Ivy Leaguers proclaiming the sanctity of a freedom of speech so contingent upon wealth and political power. There is an even greater irony that the fight for true freedom of speech, if history is any indicator, must entail more direct action against defenders of the status quo such as Ray Kelly. To denounce such action out of indulgence in the neoliberal myth of a sacrosanct, already existing, freedom of speech is to condemn the millions in this country with no meaningful voice to eternal silence.

Every few years, an advocate of oppression is shouted down. Every few years, the protestors are denounced. They are asked to trust open, ‘civil’ dialogue to stop oppression, despite a historical record of struggle and progress that speaks overwhelmingly to the contrary. They are asked to restrain their protest for freedom so to protect American freedom of speech, despite the undeniable fact that our private media and post-Citizens United political system hear only dollars, not the voices of the masses. Some will claim that both sides have the same goal, freedom, but merely differ on tactics. Yet the historical record is too clear and the growing dysfunctions in our democracy too gross to take any such claims as sincere. In a few years, when protestors shout down another oppressive conservative, we will be forced to lucidly choose which side we are on: The oppressors or the protestors. The status quo or progress.

## Framework

### FW – A2 Case O/W

#### Voting negative does not make you complicit with the harms of the status quo. By voting negative you reward our exposure of linguistic factors in the construction of race and create conditions necessary to fight all racism.

Delmar **England**, Expert on Ethics and Public Policy, The Illusion of Categorical Identity, April/May, 20**01**

A race is an arbitrary category based on arbitrarily selected similarities. It exists only in the mind. The real *is* each individual who is identified by a specific set of characteristics peculiar only to that individual and no one else. This is reality. The admonition to treat each as an individual is sound advice if one wishes to deal with reality. Although the core definition of racism is anti-individualism and not at all confined to skin color, it is this particular manifestation that is most highly visible and the focus of much attention. Given this fact and the fact that exposing the roots of racism in one area exposes the roots in all, let's examine the racism that is usually regarded as a "black vs white" issue.

### FW – Policy Anlysis

#### The method through which we frame and discuss racial representations forms the fabric of social reality. Unless they justify their conception of racial difference, solvency based on that conception is impossible.

Martin **Jones**, Prof of Law at U. of Miami, Darkness Made Visible: Law, Metaphor, and the Racial Self, 19**93**

But race, for all its rhetorical power, is an incoherent fiction. "The truth is," as Anthony Appiah notes, "there are no races." Racial categories are neither objective nor natural, but ideological and constructed. In these terms race is not so much a category but a practice: people are raced. Consequently, the problems of race have been viewed not only as political or psychological or cultural, but somehow external to language itself.  
For these reasons, the problem in conventional legal theory is that significance is often irrationally attributed to race. Race is understood as something that is already "there," freestanding. This conventional account ultimately collides with its own lurking objectivism. Thus, as a construction, as a social product, and as a barrier to discourse, race lies beyond the ken of the conventional legal theory.   
From President Lincoln to Justice O'Connor, from classical to modern American law, this specious perspective has imposed false horizons on our values and discourse. This figure of race seeks to draw its line of difference in the dialogue about democracy and equality between those who fit within and those who fit without. So long as this unreconstructed trope of difference remains as the lens -- indeed as the dark glass -- through which we view the world, it will distort our vision and conceptions of law, justice, and ourselves.

### FW – Standpoint Epist

#### Prioritize viewpoints from victims of hate speech

Boler 2k [Megan Boler (Professor in the Ontario Institute for Studies in Education at the University of Toronto and editor of Digital Media and Democracy), "All Speech is Not Free: The Ethics of "Affirmative Action Pedagogy," Philosophy of Education, 2000] AZ

I recognize that my comment is contentious: do not white, middle-class male students have as much right to share their experiences in the classroom? I think there are justifiable cases where they do not. In the case in question, the speaker’s comment functions first to dismiss the other students’ comments as “whining.” Secondly, his interjection shifts the focus of attention back to himself and to his reluctance to recognize white male privilege as an institution and pervasive reality, no matter how troubled his own individual experience. If indeed the conversation then is redirected to his experience, affirmative action pedagogy fails. The discussion instead becomes one in which the privileged and dominant voice of society is the focus and center of attention, a context which further allows him to take up time justifying his emotional resistance to recognizing historically and socially determined inequities. Further, frequently such interjections derail a class from ongoing and indepth study of nuances of feminist theory or other details of assigned readings. What is recreated is the classic situation to which women of color have learned to respond: “We do not want to educate you about racism, and we do not want to have to justify the fact of racism.” This student’s options include, instead, to go back over his class notes and assigned readings; discuss issues of sexism and feminism with other scholars and peers who care to educate him about sexism or racism for example; to do further outside reading and scholarship to evaluate the extent of feminist, postcolonial, black, and cultural studies to grasp the accomplishments and breadth of cross-disciplinary critiques of privilege. Perhaps he can come to recognize that these critiques are not isolated instances of “whining” but rather part of a systematic investigation of social inequalities, hierarchies, and the operation of power with Western society.

#### In the context of racist speech, defer to the viewpoints of victims

Matsuda 89 [Mari J. Matsuda (Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law), "Public Response to Racist Speech: Considering the Victim's Story," Michigan Law Review, 1989] AZ

If we cannot understand this pain that women, that Indian women, that Black women, that Hawaiian women, that Chicano women go through, we are never going to understand anything. All the mega-theory will not get us anywhere because without that of understanding, mega-theory does not mean anything, does not reflect social reality, does not reflect people's experience. Patricia Monture 14 There is an outsider's jurisprudence15 growing and thriving along- side mainstream jurisprudence in American law schools. The new feminist jurisprudence is a lively example of this.16 A related, and less- celebrated, outsider jurisprudence is that belonging to people of color. 17 What is it that characterizes the new jurisprudence of color? First is a methodology grounded in the particulars of their so- cial reality and experience. This method is consciously both historical and revisionist, attempting to know history from the bottom. From the fear and namelessness of the slave,18 from the broken treaties of the indigenous Americans,19 the desire to know history from the bot- tom has forced these scholars to sources often ignored: journals, poems, oral histories, and stories from their own experiences of life in a hierarchically arranged world.20 This methodology, which rejects presentist, androcentric, Eurocentric, and false-universalist descriptions of social phenomena, offers a unique description of law.21 The description is realist, but not necessarily nihilist.22 It accepts the standard teaching of street wis- dom: law is essentially political.23 It accepts as well the pragmatic use of law as a tool of social change, and the aspirational core of law as the human dream of peaceable existence.24 If these views seem contradic- tory, that is consistent with another component of jurisprudence of color: it is jurisprudence recognizing, struggling within, and utilizing contradiction, dualism, and ambiguity.25

## 2NR Blocks

### A2 Not Real World

#### The objection that college classrooms aren't "real-world" is nonsense – classrooms should be places to empower marginalized groups, not match the outside world

Boler 2k [Megan Boler (Professor in the Ontario Institute for Studies in Education at the University of Toronto and editor of Digital Media and Democracy), "All Speech is Not Free: The Ethics of "Affirmative Action Pedagogy," Philosophy of Education, 2000] AZ

Some argue that to create a classroom environment that does not replicate the inequities of the “real” world is a disservice to students. This accusation would apply as well to women’s colleges and to historically black colleges. I see no viable reason why educators should not create “separatist” spaces in which to empower historically marginalized groups, so that they may reenter a hostile “real” world better equipped to defend their views and rights. Universities in general function as “white men’s clubs” and by default function to empower those who already hold privileged positions within the “real” world. The recently publicized occasion involving Professor Mary Daly’s women’s studies classroom has functioned as a lightning rod for these frequently ill-informed debates. Professor Daly made a decision to prohibit two male students from enrolling in her women’s studies class. In this instance, apparently the two male students were enrolling not out of genuine educational interest but in a desire to “disrupt” the “safe space” of women’s studies through contentious participation. I am told that Professor Daly regularly allowed men to enroll but held separate classes for them.

### A2 Victim Culture

#### Speech codes don't create victim culture and anything else is offensive

Delgado 3 [Richard Delgado (professor at the University of Colorado Law School in Boulder) and Jean Stefancic, "Colleges Should Adopt Speech Codes," 2003] AZ

Would putting into place hate-speech rules induce passivity and a victim mentality among minority populations? Certainly not, for other alternatives will remain available as before. No African American or lesbian student is required to make a complaint when targeted by vicious verbal abuse. He or she can talk back or ignore it if he or she sees fit. Hate-speech rules simply provide an additional avenue of recourse to those who wish to take advantage of them. Indeed, one could argue that filing a complaint constitutes one way of taking charge of one’s destiny: one is active, instead of passively “lumping it” when verbal abuse strikes. It is worth noting that we do not make the “victimization” charge in connection with other offenses that we suffer, such as having a car stolen or a house burglarized, nor do we encourage those victimized in this fashion to “rise above it” or talk back to their victimizers. If we see recourse differently in the two sets of situations it may be because we secretly believe that a black who is called “nigger” by a group of whites is in reality not a victim. If so, it would make sense to encourage him not to dwell on or sulk over the event. But this is different from saying that filing a complaint deepens victimization; moreover, many studies have shown it simply is untrue. Racist speech is the harm. Filing a complaint is not. No empirical evidence suggests that filing a civil rights complaint causes otherwise innocuous behavior to acquire the capacity to harm the complainant.

### A2 Intentions Good

#### Intentions are irrelevant – accidental racial speech still creates a harmful environment for minority students

Gordon & Johnson 95 [Jill Gordon (Charles A. Dana Professor of Philosophy, Colby College) and Markus Johnson, "Race, Speech, and a Hostile Educational Environment: What Color Is Free Speech?" Journal of Social Philosophy, 2003] AZ

These cases from our own institution clearly follow the problematic pattern we have identified. What African Americans on campus experience as unambiguous racism with harmful effects, many white students and college officials interpret as not racist, because of their perceptions of the perpetrator’s intent, and they see the fundamental political issue at stake to be the freedom of speech of the perpetrator. Even if, for the mere sake of argument, we take these white students, faculty, and administrators at their word and grant that the perpetrators had no racist intent, these cases still show that racism operates in the unconscious and makes its way out of the unconscious in speech and behavior. Colleges and universities create and would like to occupy the imaginary world that Lawrence and Mills describe, the imaginary world in which racism does not exist, or exists only when individual intent can be shown, or exists only when whites and white authority say it exists. The white majority, by having the privilege to name the problem—and in these cases usually naming the protection of the free speech of racist students—also determine de facto what the problem is not. The reactions of white faculty, students, and administrators to these racist acts therefore undermine and delegitimize the experience of the African Americans on campus, thus intensifying the impact of the initial racism. These types of overtly racist incidents, combined with the microaggressive racist responses to them by whites, would seem to indicate that predominantly white college campuses do not furnish black students with a comfortable educational environment.38 Psychological information, legal studies, and recorded racist incidents help to convey in some small measure what is being played out on predominantly white college campuses and the larger national context in which it is being played out. Unconscious and conscious racism pervade American culture. Even those who might think themselves nonracists are likely to behave in racist ways. Furthermore, demonstrable harm comes from being the target of such unrelenting racism.39 African Americans on predominantly white campuses are exposed to unrelenting racism, sometimes in a concentrated, focused, and intense manner. White college administrators are likely to follow the courts’ thinking about the legitimacy of intent and are unlikely to assume a position toward racist speech that is less protective of speech than the courts’ position. The courts refuse to recognize unconscious racism, and the legal standards for proof of intent are difficult if not impossible to meet. Moreover, the courts claim that they cannot assume the role of interpreting beyond intent. There are cases in the law, however, in which the courts do engage in deep interpretation of meaning, the very thing that Lawrence is urging them to do in the case of racism. Sexual harassment cases are just such cases.